UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/3
19 July 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement* submitted by the Jammu and Kashmir Council for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 2 9 7 *

ENG

Although India and Pakistan have agreed upon a common jurisprudence to resolve peacefully the question of self-determination of the people of Jammu and Kashmir, yet we see that the two countries are embroiled in a proxy politics for the last 54 years and in a proxy war for the last 12 years. Indian security forces and the militants since January 1990 share between them the death of a generation. Death in plurals is a daily feature in Kashmir.

The people of Kashmir have been reduced to a non-people. Most of their human rights and fundamental freedoms exist in name only. India and Pakistan continue to violate the UN edict on the freedom of 'lawful entry and exit' of the people across the cease fire line. UN cease-fire arrangement of January 1949 to keep apart the two feuding soldiers has in fact divided the people. The two armies have denied the right to freedom of movement and travel to the people for the last 53 years.

During the last 12 years the civil society has suffered a massive violation of human rights. Security forces and the militants in their respective contexts of operation have violated human rights and fundamental freedoms.

Prima facie on the question of a 'title' to the right of self-determination, of the people of Jammu and Kashmir there appears to be no problem with the jurisprudence of the case. It is only in the event of an apparent affinity and a wrong positioning by the leadership that India and Pakistan are forced to defend their respective 'claims'.

Peace is a prelude to any script of progress and development. India and Pakistan as member nations of UN have subscribed 'to maintain international peace and security and to that end, to take effective collective measures for the prevention and removal of threats to peace and for the suppression of acts of aggression or other breaches of peace and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace'.

India and Pakistan, have accrued a higher burden of responsibility upon an awkward positioning vis a vis the two governments of Jammu and Kashmir at Srinagar and Muzaffarabad. At the same time the government in Srinagar has insulated itself against its duty to the people across the line of control and the government in Muzaffarabad too forgets its duty to people on the other side of the line of control.

For a wayforward we need to identify a jurisprudence that the two countries have agreed upon and short-list the areas where they remain in dispute. More so, we have to take into consideration the Kashmiri poise in this common minimum. It is understandable that the three parties, India, Pakistan and the people of Kashmir have a common minimum and at the same time hold positions at variance to each other.

We need to understand the history of mistrust between India and Pakistan. It is rooted in the scheme and scene of partition. International community has to help them to demolish the 'Bastille' of their bad memories. India and Pakistan have caused themselves as parties to the dispute in January 1948 at the United Nations. However, an Instrument of Accession with India and a Stand Still Agreement with the Government of Pakistan pre date the UN involvement. The arrangement of Pakistan with Gilgit and Baltistan is post UN Resolutions on Kashmir.

Without prejudice to the respective jurisprudence of the Indian and Pakistani control the people of Jammu and Kashmir need an urgent attention. In this regard international institutions shall have to assist them in folding off the violence of the demonic forces. First of all we need to ensure a leadership which is 'mature in judgement' and 'enlightened in conscience'.

Transfer of a free will in the choice of leaders, people's trust, transparency and accountability are key elements in a public mandate. The present leadership in Pakistani controlled Kashmir, Indian controlled Kashmir and Gilgit and Baltistan has not positioned itself vis a vis India and Pakistan in 'equity and good faith' based on the plural interests of the citizens of Jammu and Kashmir.

We need to ask ourselves a fundamental question – as to why the international community has not been hearing much from the leadership of Kashmir, about the full flux of the undisputed jurisprudence on Kashmir case. The respective influences of India and Pakistan have encouraged a pseudo and non-representative leadership in Kashmir. It has therefore failed to position itself on the question of its basic human right. There would have been no problem if it had poised itself in accordance with the jurisprudence of the case.

The UN resolutions, Tashkent, Shimla and Lahore agreements and declarations are a settled jurisprudence on the subject. The respective controls of India and Pakistan, judgements of various courts, the legislative assemblies at Srinagar and Muzaffarabad and day to day conduct of public affairs in various parts of Jammu and Kashmir, have also created a direct and relevant jurisprudence. The constitutions of India and Pakistan too reserve an interest in this jurisprudence. Unfortunately, the international community has not been sufficiently sensitized to encourage India and Pakistan for a peaceful resolution around an undisputed jurisprudence on Kashmir.

The concept of leadership in Kashmir falls short of the progress made in the concept of people's representation across the globe. In its present shape and style it is undemocratic and continues to be spoon fed by India and Pakistan to serve their respective claims.

It has failed to open up to any input from non-party experts and other necessary inputs from the general public. The understanding of the Kashmiri leadership of this vast flux of jurisprudence is sufficiently unreliable. Their political vocabulary and diplomatic phrase has failed to move with the times and as such has become obsolete. Kashmiri politics has an overbearing punitive component and is not prepared to model itself on tolerance and a popular mandate.

It is important that the international community moves forward to short list the common jurisprudence shared by India and Pakistan under the United Nations and conjoins it with the provisions of Tashkent Declaration and Shimla Agreement which define the broader contours of a settlement.

International community shall have to move in to help the political institutions in Kashmir to reinstate a sense of accountability, responsibility and culpability. At present there is no established mechanism, which a common citizen can invoke and press a grievance against the failings of a leader. A leader is a leader - 'lock, stock and barrel'. The other reason of the suffering of the people of Kashmir is a lack of an 'informed choice'. The use of violence by the state and non-state parties has anaesthetized the collective will of the people. The civil society needs to be purged of this virus of violence.

It has to be fairly put to India and Pakistan that they cannot turn their backs on the principal grievance of the people of Jammu and Kashmir. Their control over the respective governments at Srinagar and Muzaffarabad and the Northern Areas has a common jurisprudence under UN Resolutions. Bilateral declarations [Tashkent] and agreements [Shimla and Lahore] four constitutions, Indian, Pakistani, J & K government and Azad Kashmir government and April 1949 agreement on Northern Areas add an agreed and a de facto jurisprudence to the question of Jammu and Kashmir.

In any dispensation it is important to point out that the people of Kashmir have a title to the right of self-determination and India and Pakistan have their respective claims. A title takes precedence over a claim.

It is therefore important that we assist the people of Kashmir in understanding the full regime of their human rights and fundamental freedoms. To this effect we need to educate and encourage them that they shall have to take charge to ensure that the leadership is a product of their free choice.

In this regard it is high time that United Nations starts bringing India and Pakistan around the common jurisprudence assented to by these two countries on various parts [Indian controlled, Pakistan controlled parts and Northern Areas] for a peaceful resolution of the Kashmir case and for a full exercise of human rights and fundamental freedoms by the people.

The two countries shall have to dismantle the 'Bastille' of their bad memories. International community has to move forward to help India and Pakistan to demolish the Bastille of their mistrust. We see that various disciplines in the civil society in India, Pakistan, in Kashmir and abroad are making genuine efforts in search of a peaceful solution.

At a time when the people of Kashmir are suffering and the two nuclear countries stare into each others eyes an effort to organize an intra-Kashmir dialogue in search of Peace and Solution undertaken by G. M. Shah the veteran Kashmiri leader and President of Jammu and Kashmir Awami National Conference is highly commendable. It needs to be supported by the UN and other institutions working for the welfare of civil societies. The Status Paper prepared by the Organizing Committee and circulated by its chair Muzaffar Shah needs support and input. We need to urge upon India and Pakistan that they remain supportive and sympathetic to travel facilities for the identified participants requested by the organizing committee.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/4
19 July 2002

ENGLISH AND FRENCH
ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 3 of the provisional agenda

ADMINISTRATION OF JUSTICE

Written statement* submitted by Pax Christi International,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201429 9*

ENG

Kidnapping for Ransom and Hostage Taking

Pax Christi International opposes the practice of hostage taking, commonly known as kidnapping for ransom, in all forms and all situations. Recalling U.N. Human Rights Commission Resolutions 1997/28, 1998/73 and 1999/29 as well as statements made at the Sub-Commission at its forty-seventh, forty-eighth and forty-ninth session and the International Convention against the Taking of Hostages, adopted by the General Assembly in its resolution 34/146 of 17 December 1979, Pax Christi International reiterates that kidnapping is a clear violation of minimum humanitarian norms applicable at all times and of common article 3 of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977 applicable to situations of internal armed conflict.

Pax Christi International expresses its concern that kidnapping, in different forms and manifestations, have increased in many regions of the world. According to a survey released by the Hiscox insurance group in 2000, kidnap for ransom reached record levels in 1999, and has increased by 70% over the previous eight years. Latin America has the highest incidence of kidnap for ransom.

Chechnya, prior to the Russian military incursion, witnessed a high rate of kidnapping of foreign nationals for ransom. While the kidnapping of foreign nationals has reduced thereafter, the total number of kidnappings increased. Soldiers and officers of the Russian army reportedly started routinely detaining Chechen civilians, only to release them for ransom. Because Russian army officials are considered to be state actors, the crime is commonly reported as 'arbitrary detention and extortion'. But in fact it is also a type of extortive kidnapping. Kidnapping by state actors, as well as non-state armed groups are violations of human rights and international humanitarian law.

In its recently published report, "The Kidnapping Industry in Colombia," Pax Christi Netherlands, a member organisation of Pax Christi International, states that at least one country in four around the world is affected by the practice of kidnapping. The report cites Colombia as having the highest rate of kidnappings, including the practices of mass kidnappings and the kidnapping of small children. In 1998, the total number of kidnappings in Colombia rose to more than 2000 cases, and only two years later a record of 3706 kidnap-cases were registered by the Colombian NGO Fundación País Libre.

Taking hostage of unarmed, defenceless individuals not only paralyses the individual victim, but also affects the psychological and economic integrity of an entire family, where it is the subject of ransom demands. This usually means that after the tragedy of a kidnapping has come to an end, the victims not only suffer from long-lasting personal trauma but also find themselves in great debt. In the case of Colombia, the ransom payments often lead to the bankruptcy of the victim's (family) business or to long-running bank debts that usually attract incredibly high interest rates.

Moreover it creates an impossible moral dilemma for those upon whom demands for ransoms are made. On the one hand, paying ransom seems the only way to save the life of the victim. On the other hand, it continues the cycle of violence and in fact has a spiralling effect.

Following the kidnappings of a group of tourists in April 2000 and subsequent acts of kidnapping in the same year, the Abu Sayyaf group in Southern Philippines was able to realize substantial military growth. They not only bought new arms and ammunition, but also recruited new members. The Abu Sayyaf had consisted of only a few hundred rebels, but after the ransom payment it became a rebel group of more than a thousand members.

Pax Christi International firmly believes that the practice of kidnap for ransom, carried out by either state or non-state actors, actively contributes to the fuelling of wars. It calls upon the governments of countries in which kidnap for ransom fuels violence and internal instability to seriously consider solutions to the problems of violence and impunity. Governments should address the lack of legal tools as well as the widespread corruption and extortion that contribute to the increase in kidnapping. Political will to tackle these issues are indispensable.

Pax Christi reiterates the need emphasised by Mrs. Mary Robinson in Bogotá in December 2000 for a global accord on human rights and international humanitarian law. This accord would consist of a commitment to concrete acts, which could be independently verified by third parties decided upon beforehand. Such an accord could be proposed by either a state or non-state party to an internal armed conflict, or by civil society, or by facilitators or mediators.

Pax Christi International supports the facilitation of inter-state prosecution of armed groups that practice kidnapping as an instrument of war. The International Criminal Court, once in function, will have jurisdiction over hostage-taking by armed groups, Pax Christi International calls upon all countries who are not party to the Rome Statute to take immediate steps towards its ratification. Apart from its jurisdiction to try parties involved in the practice of kidnap for ransom, the International Criminal Court could serve as a deterrent, as well as a mechanism to accelerate peace negotiations.

Pax Christi International calls upon the European Union and the international community to initiate discussion on a global policy on ransom payments, which should include the promotion of public discussion on the issue of payment or non-payment of ransoms.

Pax Christi International, calls on all state and non-state parties world-wide to consider these and all other necessary measures, in accordance with relevant provisions of international law and international standards of human rights, to prevent, combat and punish acts of kidnapping, including strengthening international cooperation in this field.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/5
19 July 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 5 of the provisional agenda

PREVENTION OF DISCRIMINATION

Written statement* submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 July 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 3 0 2 *

ENG

Caste and Descent-Based Discrimination

At birth, a vast number of people from different regions of the world are assigned a life long status, based on descent, from which they cannot escape and which is used to justify discrimination, exclusion, and violence. One of the most pervasive forms of descent-based discrimination is caste, which extends throughout Asia, Africa, and the South Asia diaspora. Today, over 250 million people worldwide suffer under what is often a hidden apartheid of segregation, modern-day slavery, and other extreme forms of discrimination, exploitation, and violence. In effect, caste imposes enormous obstacles to the full attainment of civil, political, economic, social, and cultural rights.

Caste is descent-based and hereditary in nature. It is a characteristic determined by one's birth into a particular caste, irrespective of the faith practiced by the individual, and is used to denote a system of rigid social stratification into ranked groups defined by descent and occupation. Under various caste systems throughout the world, this hierarchy is used to create divisions along housing, occupation, education, and marriage lines – divisions that are reinforced through the practice and threat of social ostracism, economic boycotts, and even physical violence. As a result, the victims of these caste systems commonly suffer from total physical and social segregation, and are limited to the most menial and hazardous occupations.

Enforced economic and social isolation have also created pervasive conditions of illiteracy, poverty, and landlessness among lower caste communities. Given the absence of distinguishing physical characteristics, many outsiders label these conditions as the cruelties of poverty, and not discrimination. However, poverty can be quite deceptive. It makes one conclude that all suffer from it equally. A closer look reveals the discrimination inherent in the allocation of jobs, land, basic resources, and even physical security, as lower caste communities are disproportionately victims of violence, bonded labor, and other severe forms of abuse.

Since 1998 Human Rights Watch has investigated and documented caste-based discrimination and persecution in India. In 2000, our focus expanded to looking at similar forms of discrimination in other South Asian countries, as well as Japan, West Africa, and regions with a significant South Asian diaspora population, such as Eastern and Southern Africa, North America, the Caribbean, the United Kingdom, Malaysia, and the United States. In August 2001 Human Rights Watch published a report entitled *Caste Discrimination: A Global Concern*.

This report details caste-based practices among communities in South Asia, Japan, and Western Africa, as well as in the South Asian diaspora of North America and East Asia. In Africa, the report focuses on the Wolof societies of Senegal, the Osu of Nigeria, and the caste-like, slave practices in Mauritania, although caste-based practices are known to exist throughout Africa, including in Somalia, Gambia, and Cameroon.

Among the report's most significant findings were the common features shared by caste systems in each of these countries. These include: impunity for perpetrators of crimes against low-caste communities; physical segregation; social segregation, including the prohibition against inter-marriage; restrictions on occupations frequently limiting so-called lower-caste populations to the most menial and hazardous forms of work such as manual scavenging; the use of degrading language to describe those from the oppressed section based on constructed notions of purity and pollution, filth and cleanliness; high levels of illiteracy, poverty and landlessness for 'low-caste' populations; pervasive debt bondage due to poor remuneration for 'low-caste' occupations; double-discrimination and exacerbated exploitation against 'low-caste' women; and non-implementation of legislation designed to address the discrimination.

In many cases, caste systems coexist with otherwise democratic structures. In countries such as Nigeria, governments have also enacted progressive legislation to combat abuses against lower-caste communities. Despite formal protections in law, however, discriminatory treatment remains endemic and discriminatory societal norms continue to be reinforced by government and private structures and practices, in some cases through violent means.

Despite the magnitude of the problem, concerted international attention and the commitment of resources to assist national governments in this important work is long overdue. Still, important steps have been taken by NGOs and U.N. bodies, including the UN Sub-Commission for the Promotion and Protection of Human Rights, over the last several years to forward the debate and ultimately the enforcement of national legislation to combat these abuses.

In August 2000, the sub-commission passed Resolution 2000/4 on Discrimination Based on Work and Descent. The resolution, aimed at addressing the issue of caste, reaffirmed that discrimination based on work and descent is prohibited under international human rights law. The sub-commission also decided to further identify affected communities, examine existing constitutional, legislative, and administrative measures for the abolition of such discrimination, and make concrete recommendations for the effective elimination of such practices.

In August 2001, pursuant to Sub-Commission Resolution 2000/4, sub-commission expert R.K.W. Goonesekere presented his working paper on work and descent-based discrimination to the sub-commission's fifty-third session. Because of time and other constraints, Mr. Goonesekere limited the paper's focus to the Asian countries of India, Nepal, Pakistan, Sri Lanka, and Japan but stated that further study of African countries in particular was warranted. The presentation of the paper, and the ensuing debate amongst sub-commission experts that followed, marked the first time that caste discrimination was discussed as a major source of human rights violations worldwide by a U.N. human rights body. The sub-commission also determined by consensus to extend the study to other regions of the world where work and descent-based discrimination continues to be experienced, including and especially Africa.

Human Rights Watch welcomes this discussion on descent-based discrimination and Africa in particular by the sub-commission and considers it an important step toward achieving the paramount goal of ending caste-based discrimination worldwide. However, the sub-commission must now pay particular attention to how governments address caste and descent-based discrimination. To that end, Human Rights Watch recommends that sub-commission seek information from governments on the measures and legislative actions they are taking to eradicate caste-based discrimination, including legislative reform, public awareness campaigns, administrative measures, and constitutional reform. The sub-commission should also solicit information from non-governmental organizations on the progress being achieved by governments in these areas. The sub-commission should urge governments to:

- Establish a program and timetable to enforce the abolition of "untouchability," segregation, or similar practices.
- Enact and fully enforce laws aimed at ending abuses associated with caste, such as child labor, bonded labor, land reform, manual collection of human waste, and forced prostitution or similar practices.
- Ensure specific protection measures for women in laws and programs on descent-based discrimination, and ensure issues of caste are fully integrated into broader measures to end violence and discrimination against women.

- Ensure issues of descent-based discrimination are fully addressed in the design and implementation of poverty-reduction and debt relief strategies.
- Allocate adequate funds for the socio-economic and educational support of communities that have faced discrimination on the basis of caste.
- Ensure greater participation by the affected communities in civil administration.

The exploitation of low-caste laborers and the rigid assignment of demeaning occupations on the basis of caste keep lower-caste populations in a position of economic and physical vulnerability. The triple burden of caste, class, and gender effectively ensures that lower-caste women are the farthest removed from legal protections. Only with the full and meaningful implementation of the Universal Declaration of Human Rights and of domestic laws designed to abolish the vestiges of various caste systems and to protect the economic, social, cultural, civil, and political rights of all, can the process of attaining economic and physical security, and human dignity, be achieved.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/6
19 July 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 4 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by International League for Human Rights,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 3 0 4 *

ENG

Transnational Corporations And Human Rights

1. The role of transnational corporations in the promotion, or abuse, of human rights, has been studied, but not there is not a great body of work on the subject. A corporation may work jointly with a government in a development project that gives rise to human rights violations. More often, the relationship is more indirect but the impact may still be great. We applaud the Sub-Commission for entrusting this subject to the Working Group on Transnational Corporations, which has now completed a draft Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2). Further study, citing specific existing examples, is warranted as the Sub-Commission considers the draft Human Rights Principles. We therefore wish to bring to the Sub-Commission's attention, through case studies involving Tibet and Burma, key issues regarding the role of transnational corporations.

2. The People's Republic of China's (PRC) policy and practice of population transfer into Tibet, in aid of its efforts to develop Tibet economically and exploit its resources, has been well-documented. In June 1999, President Jiang Zemin announced the PRC's "Western Development" campaign. In theory, this refers to a policy of developing western China by improving its economic infrastructure and providing more funds for education, the environment and technological development. In practice, it represents a systematic escalation of the long-standing policy of exploiting natural resources in Tibet and Xinjiang for export to China. In aid of its exploitation of Tibet, the PRC has received, and is seeking, the assistance of transnational corporations.

3. With the support of international corporations, mining operations in Tibet threaten to violate the Tibetans' right to self-determination; that is, their right to freely determine their economic, social and cultural development. For example, Australian-owned Sino Mining International (SMI) and other foreign investors plan to develop the Tanjiashan gold deposit in northern Tibet. Tibetans, however, are not participating in the decisions to exploit their natural resources. They will not enjoy the economic benefits these activities bring, as the resources are mined for export. Moreover, evidence indicates that such projects are pursued in an environmentally destructive manner, polluting Tibet's lands, forests and waters. Tibetan communities will bear the long-term social and environmental costs of destructive mining practices.

4. Significant reserves of oil, gas and hydropower are also located in Xinjiang and Qinghai (Tibetan: Amdo) Provinces. China's oil and gas reserves already have lured foreign investment. BP Amoco invested $578 million in the Chinese oil company, PetroChina, to help complete the "Sebei-Lanzhou" pipeline, which now runs 2500 km from Tibet's Tsaidam Basin to Lanzhou. Italian ENI/Agip also assisted in the construction of this pipeline across the Tibetan plateau. This internationally-financed energy project was developed without consulting Tibetans, without providing any compensation to the Tibetans for their natural resources, and without assessing its dramatic environmental and social impact.

5. China's plan to construct a 4000 km oil pipeline from Xinjiang to Shanghai, known as the "West-East Pipeline" project, similarly exploits the people's resources without their participation or benefit. This pipeline will eventually connect with the Sebei-Lanzhou pipeline. To finance this estimated $18 billion project, the PRC is entering into partnerships with Shell, Exxon/Mobil and other transnational corporations. Without their financial backing, the PRC simply could not guarantee the success of this unprecedented project. According to Business Week, because China views this project as the backbone of its national energy plan and a springboard for future foreign

investments, China initially has been willing to pay lip service to examining the project's social and environmental impacts. Nevertheless, the construction of this pipeline raises grave concerns about the importation of Chinese laborers to work on the pipeline, long-term environmental degradation, lack of compensation to Tibetans and Uighurs for their land, and long-term economic control over the region.

6. Virtually all of the natural resources and material wealth extracted from Tibet are channeled back to enrich China's eastern regions. The proposed Qinghai-Tibet railway will also serve to accelerate the extraction of minerals and other natural resources, as well as promote the "assimilation of Tibet into the motherland" by increasing Chinese migration. The purpose of such large-scale infrastructure projects, according to Tibet Information Network, is to facilitate the extraction of raw materials and goods *out of* Tibet and into the wealthier, more industrialized eastern Chinese regions. The People's Daily acknowledged that this project will bring an "unprecedented mammoth transfer of resources." Furthermore, the Chinese President confirmed last August in an interview with the New York Times that the construction of railway lines into central Tibet was a "political decision."

7. Another example of transnational corporations participating in violations of the Tibetans' rights to self-determination, to religious and cultural freedom, and to a protected environment, is the Yamdrok Tso hydroelectric project. This project was built over the strong objections of many Tibetans (some of whom were jailed for objecting) as it threatens the environment surrounding a lake considered sacred by the Tibetan people. Without substantial participation by transnational corporations, which supplied equipment and expertise, this project could not have been built. Moreover, the primary purpose of the project is to supply additional electric power to the Lhasa area in order to support the transfer of more Chinese settlers into this region.

8. Large development projects, supported by transnational corporations, have generated job opportunities. However, they largely benefit transplanted Chinese who obtain most of the skilled and managerial positions at the expense of Tibetans who often fill unskilled positions. There is further evidence that, on large infrastructure projects, Tibetans have been forced to "contribute" labor as part of a community contribution. Also, prisoners in "re-education through labor" and "reform through labor" camps, many of whom are prisoners of conscience, have been pressed into work on large scale lumbering operations in eastern Tibet. The use of such forced labor violates the International Covenant on Civil and Political Rights and the two International Labor Organization Forced Labor Conventions. Transnational corporations that become partners in projects employing such labor practices are aiding and abetting gross human rights violations.

9. The used of forced labor in violation of international law also has been documented in partnerships between the government of Burma and transnational corporations. One example involves a pending United States lawsuit brought against Unocal Corporation, based on its participation in an oil pipeline project in Burma. During this project, government officials and soldiers carried out forced labor and execution, and committed rape and torture. Recently, a California state court ruled that Unocal may be vicariously liable for the alleged human rights violations committed by its joint-venture partner. If upheld, this ruling could expose U.S. companies to lawsuits in American courts for human rights violations overseas.

10. The Sub-Commission, and the international community generally, should hold the PRC responsible for human rights violations within Tibet and the Burmese government responsible for human rights abuses in Burma. We remain concerned, however, about the ability of transnational corporations to operate with impunity in partnership with States, such as the PRC and Burma, that routinely violate, and permit the violation of, human rights within their territories. Corporations

that knowingly contribute to human rights violations should not be allowed to absolve themselves of responsibility by claiming that any human rights violations are the responsibility of the State in which they occur. As the Preamble to the Human Rights Principles states, transnational corporations have an independent obligation to respect generally recognized human rights principles and norms. The examples cited above violate one or more of the Principles, including paras. 2, 3, 5-9, 12 and 14.

11. States, moreover, have an obligation to ensure that firms operating under their protection are not contributing to the violation of human rights in other States' territories. The Charter of the United Nations requires all Members to "take joint and several action" to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." This obligation is repeated in the two International Covenants and in the Universal Declaration of Human Rights. We therefore submit that a State cannot, consistent with that obligation, permit a corporation organized and operating under the protection of its laws (and in the case of international projects, often with financial and/or political support of the Member State) to engage in practices in another State that violate fundamental human rights.

12. We call upon the Sub-Commission to consider and strengthen the draft Human Rights Principles offered by the Working Group, and to examine further the specific ways in which transnational corporations may participate directly and indirectly in human rights violations. Further, the Sub-Commission should affirm that States have a responsibility, as part of their obligation to promote fundamental human rights, to monitor firms and corporations operating from their territories and under their protection in order prevent human rights violations in any part of the world.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/7
19 July 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement* submitted by France Libertés,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201430 6*
ENG

An overview of the situation of the Human Rights violation in Iran

We will present some information about the violation of Human Rights in Iran, using information taken mainly from Iranian official media and press, the Report on the situation of human rights in the Islamic Republic of Iran to the 58 session of CHR, and the last report of the Special Reporter on violence against women.

1) Public executions

The number of announced executions since the beginning of 2002 - in six months - amounts to 200, indicating a 50 percent rise compared with the same period in 2001.

Among the victims have been two women who were sentenced to stoning to death. Seday-e Edalat daily reported on June 1 that a young woman by the name of Shahnaz was sentenced to death by stoning in Karaj (west of Tehran) . Official press (Khordad daily- June 20, 2002) reported another stoning sentence issued in Tehran for a 30-year-old woman called Ashraf. Four Iranian women - Shahnaz, Ferdows, Sima and Ashraf - languish in jail waiting to be stoned to death. The number of stoning sentences during the five years of Khatami's tenure has now reached 23. Sixteen of the victims have been women.

In his last Report on the situation of human rights in the Islamic Republic of Iran (E/CN4/2002/42), the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne , underlined : "many of the punishments are gross violations of international human rights norms, including in particular the use of stoning".

The judiciary ordered the execution of Mohammad D. (Feranki), a former member of Iran's national wresting squad and the country's 1996 champion on charges of "waging war on God" on May 22.

The public affairs department of Tehran province's Justice Department announced on June 8 that six prisoners had been hanged in Tehran on charges of "hand-bag snatching." Seven others, including a woman, were sentenced to flogging and imprisonment on similar charges. (ISNA state-run news agency, June 8, 2002)

2) Savage punishments

Iranian cities have been scene of an unprecedented spate of savage punishments including amputation of fingers and legs as well as floggings that have been carried out in public mostly in the past two months.

The state-run newspapers in Tehran reported on May 8 that four prisoners, identified as Alireza N., Mohammad A., Sattar S., and Alireza Q., were sentenced to execution after receiving 75 lashes each. They were charged with "killing an officer of the State Security Forces. The same court ordered another prisoner's right hand and left foot to be amputated.

The state-owned daily, Kayhan, reported on May 7 that the right hands of two prisoners, identified as Babak Pilehvar and Hossein Rezamehvar, were amputated before large crowds in two separate locations in the southern city of Shiraz, Kazeroun Gate and Saadi Gate. "This was the first stage of the punishment and upon their recovery, their left legs will be amputated in public," the paper added.

These kinds of cruel, inhuman and degrading punishments have increased in recent months particularly in the case of women: the state-run daily Azad reported on May 29 that three women were sentenced to 100 lashes each, while two others were given 104 lashes in public in Tehran. The state-run daily, Seday-e Edalat, reported on June 30, that 13 women were flogged in the city of Qom. Among them were three pairs of sisters. They were each sentenced to 180 lashes.

3) violation of fundamental freedoms

Prof. M. Copithorne in his Report (E/CN4/2002/42) to the 58 session of CHR maintains : The treatment of intellectuals and dissidents, particularly by the security forces and the Judiciary, reveals a fearful intolerance of alternative views. The treatment of many of these persons is in violation of the Iranian Constitution and of generally accepted international standards, and in some cases is little short of vicious.

Completing this Report in his last statement to this session (2 April 2002), the Special Representative adds: powerful elite continues to use violence to confront those they deem to be enemies of the state or of religion. Activists can be kidnapped off the streets showing up months later in the custody of one of the many security agencies. Reports , including personal testimony, of the abuse of detainees continue to become public. These include long periods of solitary confinement, coerced confessions, disregard for medical condition of detainees, refusal of access for relatives and lawyers, as well commonly, of psychological torture, and from time to time ,of physical torture as well. There is a recent report that a journalist released on bail after a year in prison, was taken straight to hospital in a state of paralysis .

In her last report of Ms. Radhika Coomaraswamy, the Special Reporter on violence against women(E/CN4/2002/83/Add.1), mentioned : i It is reported that women prisoners are systematically subject to rape by judges and high-ranking official in prison. She adds: The Special Reporter remains concerned about violence against women in Iran and requests the Government to respond to the allegations of the use of sexual torture in Evin Prison, Teheran.

Since the above mentioned Report and statement the situation has seriously worsened . According to state-run newspapers, "strike units of State Security Forces" have launched a new crackdown on "depravity" among young people.

Thousands of young people have been arrested and subjected to brutal treatment by suppressive agents of the clerical regime since the beginning of July this year in a new wave of crackdown in Tehran and other towns and cities across Iran.

The judiciary in the southern Fars Province announced yesterday that more than 30 girls and boys were sentenced to flogging and imprisonment following security forces' raid on a birthday party for a 13-year-old girl. A 17-year-old girl, "a musician", "a singer", and "a cameraman" were sentenced to 74 lashes each and from one to two years of imprisonment. Twenty others were sentenced to 40 lashes and the rest received a suspended sentence of 40 lashes."

Some of the measures taken by the Iranians authorities in the new crackdown include introduction of "vice patrols" in the cities by Special Anti-riot Forces using brand new black Landcriusers to make arrests and conduct body search; brutal treatment of young people under the pretext of "purging trouble-makers" and "enhancing security;" carrying out urban exercises by suppressive security and Bassij forces; "invasion" of entire neighbourhood and vast areas of cities by security forces to conduct house-to-house search; conducting raids on private homes and arresting individuals for taking part in parties, or for having satellite dishes; increase in the number of check-points; harassment and persecution of girls and women for "inappropriate veiling" and harassing young people for excuses such as "listening to loud music."

The daily, Nowrouz (July 1 2002), acknowledged that "dozens of people are being arrested daily... in every neighbourhood." The daily warned: "Has one taken into consideration the hatred and vengefulness that such treatment creates in the hearts of young people?"

The official news agency, IRNA, reported on July 1: "A large number of citizens have contacted IRNA and said that people are being arrested by the patrols of the Special Unit of the State Security Forces and are being subjected to body search, while they have not committed any crime." The agency added: "Tehran residents have reported aggressive treatment of detainees in public by the Special Units of the security forces."

It is particularly in this context that the Special Representative in his last Report concluded that: Change is inevitable. Newspapers in Tehran quoted a high-rinking cleric, Ayatollah Ebrahim Amini, deputy head of the experts assembly, as saying " I swear to God that society is on the threshold of an explosion, people are deeply discontented and worried. If this continues the system will be under threat." (Reuters May 16 , 2002)

All of the signs indicate that the failure to ratify a resolution by the UN Human Rights Commission in April and a halt for monitoring human rights situation by the UN Special Representative have been contribute to further repression against the Iranian people.

Under these critical circumstances it is strongly necessary to raise this disturbing issue by introducing a substantive resolution at the forthcoming UN General Assembly. The resolution ought to condemn flagrant violation of human rights in Iran and should emphasise the need for resumption of UN Special Representative's monitoring of human rights situation in Iran.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/8
19 July 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 5 of the provisional agenda

PREVENTION OF DISCRIMINATION

Written statement* submitted by Syriac Universal Alliance, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 July 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201430 8*

ENG

A call for attention to the future well-being of the forgotten Aramean Christians

Dear members of the Sub-Commission,

Please allow me, the main representative to UNOG on behalf of the Syriac Universal Alliance (hereafter: SUA), to call your sincere attention briefly in this short letter.

I will start with an historical outline, to make you acquainted with the people who are represented by SUA. Subsequently, the present situation of these people will be showed to you. Further the SUA will be introduced to you. Finally, I would like to present to the members of the Sub-Commission the cloudy future prospects of this ancient people, but yet so frequently forgotten and neglected and ask you for the necessary help and support.

History & Identity

The Arameans were an important ethnic group in the Near East during the late second and the first millennium B.C. Their earliest history is mainly known to us via three sources: the Bible, the Assyrian annals and the Aramaic inscriptions. According to Biblical testimony, the Jewish patriarchs were Arameans too.[1] Biblical and non-biblical sources further attest to the many Aramean kingdoms[2] that existed mainly in the northern area of current Syria, southeastern Turkey and northern Iraq. This whole region was known as "Aram-Naharaim" in Hebrew. The Greek translation of the Hebrew Bible (Septuagint, 280 BC), translated the words "Aram-Naharaim", "Aram(eans)" and " Aramaic" with " Mesopotamia", "Syria(ns)" and "Syrian".

Under the Persians (ca. 539-331 B.C.) Aramaic officially became the *lingua franca*. When the Christian message was proclaimed in the Fertile Crescent, Aramaic was still a dominant language in the region beside Greek. When the Arameans heard the Gospel in their mother tongue, they converted to Christianity and established together with the apostles of Jesus Christ and the converted Jews, the Syrian Church of Antioch. Due to external factors, the Aramean Christians underwent a change of name and finally adopted the name which the Greek world already used to call them and their language namely: Syrians and Syriac. To avoid association with Arab Syrians from Syria, the Syriac-Orthodox prefer "Syriacs" above "Syrians" as self-designation in English.

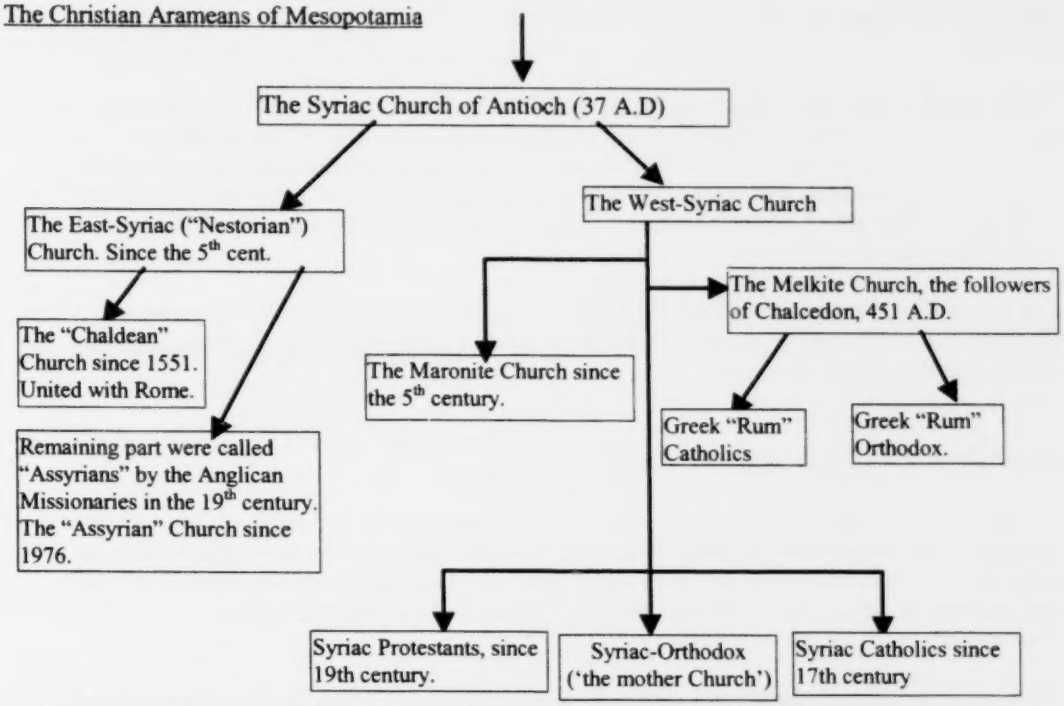
Due to geographical reasons, the Arameans were termed "*West-Syriacs*", those who were living in the Roman (later Byzantine) empire, and "*East-Syriacs*" those who were living in the Parthian (since 226 AD Sasanian; Persian) empire.
The liturgical language of both these communities is called *Syriac*, i.e. an Aramaic dialect from Edessa (Urfa, Turkey) that was rapidly accepted as the literary language of all non-Greek eastern Christendom. Syriac (Aramaic) was the primary vehicle for the Christianization of large parts of central and south-central Asia in early Christianity. It is also the literary language of the Maronites of Lebanon; the Melkites of Syria (replaced Syriac with Arabic in the 17th century). Syriac (Aramaic) played also an important role as the intermediary through which Greek learning and thought passed to the Islamic world and eventually to Europe.

Due to the missionary activities of the Roman Catholic Church in the 16th century, a schism divided *The (Syriac) Church of the East*[3]. Those who kept faithful to their (mother) church, stayed "Nestorians". Those who embraced the Roman Catholic dogma, however, were called "*Chaldeans*" in order to distinguish them from their "Nestorian" brothers. Similarly, the remaining part of the "Nestorians" were termed "Assyrians" in the 19th century; this time by Anglicans

missionaries. In the early 20th century "Assyrianism" was developed and spread among some Syriac communities. Some rejected this political idea with its mythological linkage to the ancient Assyrians; whereas others accepted it.

In order to provide a clear picture about the various denominations, below a scheme is presented.

The Christian Arameans of Mesopotamia


The Syriac Church of Antioch (37 A.D)
The East-Syriac ("Nestorian") Church. Since the 5th cent.
The West-Syriac Church
The "Chaldean" Church since 1551. United with Rome.
Remaining part were called "Assyrians" by the Anglican Missionaries in the 19th century. The "Assyrian" Church since 1976.
The Maronite Church since the 5th century.
The Melkite Church, the followers of Chalcedon, 451 A.D.
Greek "Rum" Catholics
Greek "Rum" Orthodox.
Syriac Protestants, since 19th century.
Syriac-Orthodox ('the mother Church')
Syriac Catholics since 17th century

In the light of the historical truth and in honour to the ancestors, SUA remains loyal to its two correct historical interchangeable names: *Arameans and Syriacs*. Regarding this synonymy for one and the same people, we quote a famous Greek and a Syriac historian, namely:
Posidonius (ca. 150 B.C.): *"The people we* [Greeks] *call Syrians were called by the Syrians themselves Arameans."*
St. Michael the Great († 1199 A.D.)[4]: *"The kingdoms which have been established in Antiquity by our race, (that of) the Arameans, namely the descendants of Aram, who were called Syrians."*

Present-day situation of the Aramean (Syriac) people

The Golden Age of the Syriac (Aramean) Christians was between the fourth and eighth centuries. Dark Ages followed soon, however. With the Arabic conquests not only Arabic supplanted Aramaic, but the Arameans (Syriacs) also lost many people to the Arabic Islam. As former teachers of the Arabs, they later became to be treated as second-class citizens by them. They faced many persecutions (even under the Byzantines!) and forced conversions to Islam. With the infiltration of Kurdish tribes in the region since the 11th century, the Syriac (Aramean) people suffered torture, discrimination, killing and been the victims of robbery. From the 15th century onward, with the establishment of the Ottoman Empire, there was no improvement.

One of the many dark pages in their history is under Timur Lane in the 14th century, who decimated the Syriac (Aramean) Christians. Similarly, hundreds of thousands innocent Syriacs

(Arameans) who lived in the Ottoman Empire and Persia in the 19th and early 20th century, became once again victims of genocide and mass-scale ethnic cleansing.

In the late 19th and early 20th century, many Aramean Christians fled from their ancient homelands to the West. A second immigration wave started from the 1960s in *Tur-'Abdin*, in Southeast Turkey. Even in the mid 1990s many fled from this former Christian region because they feared their lives. These mass-exoduses brought thousands of Arameans (Syriacs) and their language to the West.

Unfortunately, exact figures about the Syriac (Aramean) population are not available. We estimate, however, the total number of all the Syriac (Aramean) denominations to be approximately 4 million globally. As to the Syriac – Orthodox, the vast majority of them live in Diaspora and are counted to be around 650.000 worldwide! Also a large majority of the other Syriac branches live in Diaspora. They are all in serious danger to become victims of assimilation (like Arabization, Turkification and Kurdification).

The peaceful and democratic minded Arameans (Syriacs) are a homeless people with a sacred language and a rich heritage, which was, till the present day, buried beneath the persecutions and ethnic cleansing of past centuries.

Syriac Universal Alliance (http://www.syriac-ua.org)

Living in the four corners of the world, the Syriacs (Arameans) have managed to institute several cultural unions as guardians of their rich heritage. Soon these associations were united under the umbrella of a Federation. Aramaic Federations under the patronage of SUA (established in 1983) can be found in the U.S.A., Australia, Lebanon, Sweden, France, Belgium, Germany, Holland and Switzerland.

SUA is a constitutional, democratic, civil and secular organization and political independent, built on the bases of respect for every people, ethnicity and religion.

Our main objectives are:

- To become an independent organization in the form of a governmental structure serving the Aramean (Syriac) people worldwide;
- To guard the Arameans from falling apart, being dispersed and assimilated in the Diaspora as well as in Aram-Naharaim (=Mesopotamia), their original home;
- To represent the Arameans (Syriacs) globally and to protect their human rights;
- To preserve the ancient cultural heritage of the Syriacs (Arameans) in the present and future.

An example of projects to meet our objectives is *"The Hidden Pearl"*.[5] This multimedia masterpiece consists out of three videotapes and three books and covers 3000 years of Aramaic history.

Appeal to the Sub-Commission

The SUA is aware, and the thought frightens us, that a nation which forgets its language forgets its past and soon loses its identity. Our first appeal is therefore to support the SUA by all means possible in protecting an ancient people, with a rich heritage, which have suffered genocides, torture, ethnic cleansing and been the victims of robbery carried out by the various peoples and

regimes of the Middle-East during centuries.

In all modesty, SUA requests the Sub-Commission for attention and support in:

- putting the forgotten and neglected Aramean (Syriac) question on the agenda;
- making the world familiar with the existence of the forgotten Syriac (Aramean) people;
- revising the Treaty of Lausanne (1923) wherein the Arameans are not recognized as an ethnic minority by Turkey.
- establishing an international enquiry commission on the 1915 mass killings consisting out of independent academics from different countries;
- authorizing the Arameans in their homelands (Aram-Naharaim):
  to protect, use and promote their respective language and religion
  to renovate and build new churches and monasteries
  to restore architectural monuments and various places of worship
  to open schools, social institutions and cultural associations
  to restore the names of villages, towns and places in their original (Aramaic) language.

I highly thank you for your precious time and attention. For any further questions or contacts, I can be reached at the addresses referred to below.

Respectfully Yours,

Gabriel Sengo
Syriac Universal Alliance
Main Representative to UNOG
E-mail: g.sengo@worldmail.nl

---

[1] E.g., Genesis 25:20; 28:5ff.; Deuteronomy 26:5.
[2] E.g., Aram-Beth-Rehob, Aram-Damascus, Aram-Mosh/Tur-'Abdin.
[3] Since 1976: *The Assyrian Church of the East*.
[4] For more quotes by the Syriac historians, see www.aramnaharaim.org.
[5] Cf. http://sor.cua.edu/Pub/BrockHPearl/index.html and http://www.aramnaharaim.org/film_arameans.htm.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/9
19 July 2002

ENGLISH, FRENCH AND
SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 4 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement* submitted by Europe-Third World Centre, World Confederation of Labour, non-governmental organisations in general consultative status, American Association of Jurists, Centro de Estudios Europeos, Commission for the Defense of Human Rights in Central America, France Libertés : Fondation Danielle Mitterrand, Indian Movement "Tupaj Amaru", International League for the Rights and Liberation of Peoples, Union of Arab Jurists, Women's International League for Peace and Freedom, non-governmental organisations in special consultative status, International Educational Development, Movement against Racism and for Friendship among Peoples and World Peace Council, non-governmental organisations on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 July 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 3 3 8 *

ENG

Working Group on the Working Methods and Activities of Transnational Corporations of the United Nations Sub-Commission on the Promotion and Protection of Human Rights: at an impasse

1. On a document submitted to the Sub-Commission on the Promotion and Protection of Human Rights in 2001 (E/CN.4/Sub.2/2001/NGO/21. Activities of the Working Group on Transnational Corporations of the Sub-Commission on the Promotion and Protection of Human Rights), the American Association of Jurists and the Centre Europe Third World stated:

   « ... The Working Group has dedicated a great part of its time in meetings to examining a project of directives for a voluntary code of conduct of the transnational corporations, presented by the United States member of the group, Mr. David Weissbrodt, entitled « Draft Universal Guideline for Companies », for which the last version is dated May 21, 2001. This does not appear to be part of the mandate of the Working Group. At best, it stems from a highly controversial interpretation of the mandate. ... »

2. The above-described situation still persists. The novelty is that in February 2002 the Working Group held a non-official, confidential meeting, called by the United States member of the Working Group, Mr. Weissbrodt with the sole aim to examine a new version of his project, this time entitled « Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises » (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2). The new project is not only a clear denaturalisation of the Working Group's mandate but a significant step backwards on the current state of international humans rights law.

The Major Features of Mr. Weissbrodt's New Project

A. Non-compliance with the objective of the Working Group's mandate

3. Mr. Weissbrodt's project is destined to transnational corporations and to « other business enterprises ». The latter defined by the author as « any business entity, regardless of the international or domestic nature of its activities ». This definition cannot be understood as referring only to transnational corporations' subsidiaries or subcontractor companies (which, certainly fall within the Working Group's area of study) but as regarding any kind of enterprise operating at a domestic level regardless of its dimension.

4. Thus it fails to comply with the objective of the study given to the Group, namely, to pay attention to transnational corporations, as a worldwide specific phenomenon of enormous economic, social and political significance, with evident effects upon the enjoyment of human rights on a planetary scale. Certainly, the Sub-Commission, when conferring the mandate upon the Working Group in 1998[1], had no intention to charge the Group the task to pay attention to little companies only operating at home.

5. Apart from non-compliance with the Working Group's objective of the study, Mr. Weissbrodt's project does not tackle at all the effects on fundamental human rights which can derive only from transnational corporations' activities, given their worldwide power:

   a) on the right to peace;

   b) on the right to access to essential public services;

---

1 See the Resolution 2001/3 of the Sub-Commission.

c) on the right to free access to knowledge which are social by nature;

d) on the right to freedom of communication, information, opinion and expression;

e) on the right to a real representative and participative democracy.

6. The Project, notwithstanding, in paragraphs 1 to 15, deals with various significant aspects regarding the activities of transnational corporations and other enterprises that affect, or may affect, human rights but, as will be considered later in B and C, without proposing any efficient protection system to these rights.

7. In the penultimate paragraph of the Preamble of Mr. Weissbrodt's project, it is stated that officers and workers of the enterprises have responsibilities regarding this Declaration of Principles. To include workers (who have no decision-making power in the heart of the enterprise, and often have not even a negotiating power) amongst those who are responsible is a way of diluting or deviating from the issue of civil and penal responsibility of transnational corporations as legal persons and of their officers (physical persons) who take the decisions, unless we want, for instance, to make them responsible for the lung problems of young women working in conditions of semi-slavery for subcontractors to Nike in some Asian countries; or to make the workers of Enron, who lost their jobs and their money for retirement, responsible for criminal activities carried out by officers of that enterprise which led to such a result.

B. The project gives a subordinate and secondary role to national and international operative standards; it actually ignores their binding character for transnational corporations.

8. From the Project as a whole arises the purpose of the Working Group passing a declaration of principles (and thus, not binding) for transnational corporations to be implemented with private and volunteer codes of conduct, what means, within its scope, a big step backwards in international human rights law, for it is intended to ignore that the whole of international human rights law currently in force (not exhaustively enumerated in the preamble of the project) is a prescriptive and binding law for physical as well as legal, whether public or private, persons, including transnational corporations.

9. Cheriff Bassiouni says that there are five successive stages in the progressive development of human rights: 1) enunciative (the emergency of certain common values perceived internationally); 2) declarative (the declaration on an international document or instrument of certain interests or human rights identified as such); 3) prescriptive (a wording of those rights on international instruments - general or specific - or on binding conventions); 4) implementation (search for or development of ways of implementation) and 5) criminalisation (development of international penal prescriptions aiming at the protection of such rights against its possible violation).[2]

10. Mr. Weissbrodt intends to take back, for transnational corporations, the current stage of international human rights law, prescriptive and binding, to the declarative stage. The latter has not the legal effects due to current legal standards (domestic and international) namely, to be exigible and to bring a sanction in case of non-observance.

11. There are not legal nor rational grounds to:

a) establish an specific list of human rights that should be respected by transnational corporations and not to simply establish that transnational corporations must respect,

---

2 Cheriff Bassiouni, International Criminal Law and Human Rights, Transnational Publishers, New York, vol. I, pp. 16 and 17.

like persons, all human rights and all legal standards currently in force, particularly those concerned with their activities (industrial, financial, services, and so on) and

b) take back to the declarative stage (that is, non demanding and non punishable), particularly for transnational corporations, legal standards that are currently in force (that is, binding for all and whose transgression brings a sanction).

12. This evaluation of the project can be confirmed with the reading of some of its paragraphs and the Introduction and Comments. In the Introduction, for instance:

« The Human Rights Principles and the related Commentary represent an effort to establish standards for business conduct which will assist transnational corporation and other business enterprises to be good world, national and local citizens » (E/CN.4/Sub.2/2002/WG.2/WP.1/Add.1, par. 24).

13. Paragraph 30 states that, given that the Sub-Commission asked the Working Group to contribute to the drafting of binding standards, the Group decided (unofficially, at the meeting held in February 2002) to draft a Declaration of Principles (which is non-binding, as it has been pointed out above).

14. Paragraph 32 states that the Principles « are no only intended to contribute to the drafting of binding standards… », etc. In other words, along the text, there are references to future binding standards, as if they did not already exist, and it talks about a progressive and volunteer implementation of some of the principles, as if the already existing standards were not binding and immediately applicable to transnational corporations.

C. In Mr. Weissbrodt's project private initiatives are privileged and the state is given a secondary role in the implementation of standards and the monitoring of this implementation

15. The first sentence of paragraph 1 of the Project is a general statement about the « primary responsibility » of the State to respect and make respect human rights. But this general statement is not applicable to the general context of the Project, where the « primary responsibility » of the State disappears, or at best carries out a subsidiary role, regarding transnational corporations.

16. The commentary of paragraph 4 of the Project, (« security arrangements ») states that transnational corporations and their officers shall observe international human rights standards, the U.N. Principles on the Use of force and Firearms; and the U.N. Code of Conduct for Law Enforcement Officers. This is an attempt to legitimate private militias in the enterprises. The same commentary to paragraph 4 foresees business security arrangements between enterprises and State military forces; thus, such armed forces would become a private service paid by the enterprises. This is what happens in Colombia, where British Petroleum has recognised rewarding the Armed Forces. This approach implies the prevention of the state from having monopoly over the use of force and to subordinate its armed forces to private interests.

17. The last part of the Project (« General Provisions of Implementation ») states:

a) that, as a first step to implement the Principles, enterprises will adopt internal rules according to the Principles;

b) that enterprises will be subject to periodic monitoring by national, international, governmental, and/or non-governmental mechanisms and that enterprises will themselves conduct periodic evaluations concerning their own activities.

18. Paragraph 34 of the Introduction of the Project, clears up any possible doubt as regards the secondary role given to the State, because it is placed as the sixth in the enumeration of those who will implement the Project, should it be approved, after transnational

corporations themselves, business groups or trade associations, unions, NGOs and intergovernmental organisations. The United Nations is in the seventh and last place.

19. Thus it becomes clear that the implementation of the Principles is not entrusted, as it should by a Declaration that has originated in the United Nations, firstly to states, which are responsible for assuring the law enforcement within each national territory, but to the enterprises themselves and to other private entities, except for a monitoring which could be optionally carried out by the State (governmental and/or non-governmental, reads the Project).

20. In this Project, the State and its institutions, such as justice and security forces, perform a secondary and subordinated function with respect to the private sector.

21. The American Association of Jurists and the Centre Europe–Third World have already pointed out in other documents, citing several studies, the little efficiency of voluntary codes and the private external monitoring systems' doubtful effectiveness. The latter are often fraudulent, as shown by some monitoring carried out by transnational corporations, such as, Arthur Andersen in the Enron case and Pricewaterhouse Coopers, in the Gazprom case, whose activities are currently under enquiry by Justice.

22. The approval of Mr. Weissbrodt's project would legitimitise, by means of an international document, a current situation which consists of big transnational corporations acting with total impunity, placing themselves above any norm regarding human rights, as well as above national and international institutions which are bound to enforce such standards.

23. Mr. Weissbrodt seems to adhere professor Coase's « alternative paradigm », contending that enterprises watch themselves and be not obliged to respect « artificially created » models. In other words, the Universal Declaration, the Covenants and International Conventions and eventually binding codes of conduct would be « artificial creations ». Instead, free market, businesses and profits, in a word « the market's invisible hand » are, just as the rule of universal gravitation, « natural laws », which must have priority over « artificial creations ».

24. The Working Group should turn down Mr. Weissbrodt's project and try to recover lost time and tackle with no further delay the mandate conferred to it by the Sub-Commission. The Working Group should study and make recommendations to states and to the international community on ways and means to get transnational corporations submitted to the law in force, on how to improve and complete standards so as to reach that goal and on how to get these companies punished when they violate domestic or international law.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/10
19 July 2002

ENGLISH, FRENCH AND
SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 4 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement* submitted by Europe-Third World Centre, World Confederation of Labour, non-governmer tal organisations in general consultative status, American Association of Jurists, Centro de Estudios Europeos, Commission for the Defense of Human Rights in Central America, France Libertés : Fondation Danielle Mitterrand, Indian Movement "Tupaj Amaru", International League for the Rights and Liberation of Peoples, Union of Arab Jurists, Women's International League for Peace and Freedom, non-governmental organisations in special consultative status, International Educational Development, Movement against Racism and for Friendship among Peoples and World Peace Council, non-governmental organisations on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 July 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 * 4 3 3 3 *
ENG

Transnational Corporations and Human Rights

I. Effects of transnational corporations' activities and working methods on human rights

A. What are transnational corporations?

1. Transnational corporations are private law legal entities with a presence in multiple territorial jurisdictions but with a single decision-making headquarters.

2. Transnational corporations are active in the production of goods and of services – in practically all areas of human activity – and also in financial speculation.

3. The huge amount of capital funds they possess gives them a power unprecedented in history. The trading volume of the largest transnational corporations is equal to or bigger than many countries' GDP, and the trading volume of some half dozen of them is greater that the combined GDP of the 100 poorest countries.

4. They can operate with a main corporation and subsidiaries, build up groups active in a single sector or conglomerates active in diverse fields, combine with other firms by take-overs or buy outs or by setting up financial holdings. The only operating capital such holdings posses is stock shares with which they control companies or groups of companies. However, one can always identify the nationality of a transnational corporation in that there is a government that supports and defends its interests (at the WTO, the IMF, the World Bank, or other international organisations, or by political, military or other means).

5. The true productive activities are sometimes subcontracted out while the transnational corporation controls the know-how, the trade mark and the marketing of the products. Activities can be carried on in different national territories and may quickly and frequently change location to ensure profit maximisation.

6. The transnational character of their activities allows these corporations to avoid the national and international laws and regulations that they consider counter to their interests. Transnational corporations also engage in illicit activities or in activities situated in a grey zone between legality and illegality.

7. All these activities of the transnational corporations are actively supported and aided by the wealthy countries' governments, which represent and share their interests.

B. Effects of the working methods and the activities of transnational corporations

8. These working methods and activities are governed by a basic goal : getting maximum profit in the shortest time possible, This basic objective does not admit of any obstacle whatsoever and, to get it, transnational corporations stop at nothing :

   a) the promoting of wars of aggression and interethnic conflicts in order to control the natural resources of the planet – in particular energy sources and strategic minerals – and to foster the growth and the profits of the war industry;

   b) the violation of workers' rights and human rights in general;

   c) the degradation of the environment (air water and soil included) and in particular the active and well financed opposition by the Global Climate Coalition, comprising, among others Ford, General Motors, Mobil, and Union Carbide, with the unflagging support of the government of the United States, to any limitation of emission of greenhouse gases (Kyoto Protocol);

d) the bribing of civil servants to take over essential public services (such as the supply of drinking water) through their fraudulent privatisation and thus the elimination of the rights of present and potential users;

e) the appropriation - formally legal or illegal - of ancestral, technical and scientific knowledge, which are by nature social entities;

f) the corruption of political and intellectual elites and of leaders of « civil society »;

g) the monopolisation of the principal means of communication, purveyors of the dominant ideology and mass cultural products, in order to manipulate and condition public opinion and thus change the habits and behaviour of people;

h) financing dictators, the overthrow of governments, and other criminal activities.

9. Such methods are incompatible with human rights in general, including the right to self-determination and the right to development.

C. Confusion of economic and political powers

10. If the influence of economic power over political power has been a constant in human society for as long as economic power has exited, one can notice in recent decades a growing interpenetration of economic and political power, which has led to the confusion, indeed, to the fusion, of these two powers. This process has produced an erosion both of representative democracy, right up to its formal aspects, and of the role played by its political institutions, national as well as international, as mediators – or supposed mediators – between different and contradictory interests.

11. The outstanding example of this relation between economic and political power is the United Sates, where a majority of the world's transnational corporations are based and where several are directly represented in the current government.

12. This confusion between political and economic powers is also present in the United Nations by the way of the « Global Compact » and in the European Union by the way the collaboration between the European Commission and the European Industries Round Table (ERT), composed of the transnationals Volvo, Olivetti, Siemens, Unilever and others.

II. Recommendations and proposals to hold transnational corporations responsible

13. In a state of law, transnational corporations, like individual persons and legal entities treated as individuals under the law, are liable under both civil and criminal law for violations of prevailing legal standards (both international standards, implemented through domestic legislation, and national standards).

14. Voluntary guidelines cannot substitute for standards established by national governmental organs and by international intergovernmental organs, for such guidelines are not binding legal standards whose violation leads to a punitive sanction.

15. Further, both experience and studies show that voluntary codes are inadequate, that their implementation has been found wanting because left to the discretion of the corporations, with no real independent outside monitoring. For example, a consulting firm, engaged by a transnational corporation – hence paid by the corporation – hardly constitutes an independent outside monitor.

16. It is thus necessary to set forth proposals to situate transnational corporations within a legal framework built upon certain basic principles, as follows :

a) National communities and the international community are communities of law, that is they are built on legal standards. It is « essential that human rights should be protected by the rule of law… » (Preamble of the Universal Declaration of Human Rights).

b) These standards apply necessarily both to individual persons and to legal entities

construed as persons, and their violation results in a punitive sanction.

c) Transnational corporations are legal entities construed as persons under the law and, as such, subjects and objects of law. Prevailing legal standards are thus binding upon transnational corporations, just as upon any individual person or any other legal entity construed as a person. The equality of every person before the law is clearly established in the International Charter of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

17. When applying those standards, one must start from the principle according to which human rights are at the top of the normative pyramid, to wit giving human rights priority over other rights such as intellectual property rights.

18. Existing standards should be made complete on both the national and international levels.

a) The principle of public service must be emphasized, especially in the areas of health, food (including clean water), education, housing, communication and information in all their forms, and one must prevent the setting up of oligopolies and private monopolies in these areas.

b) Implementation mechanisms of the specific instruments dealing with transnationals must be reinforced, particularly those such as the Declaration of Tripartite Principles on Transnational Corporations and Social Policy adopted by the Administrative Board of the International Labor Organization in 1977 (which, in its November 2000 amendment, refers to 30 conventions and 35 recommendations of the ILO) and the OCDE directives (revised text, June 2000), even though they merely address recommendations to the corporations.

c) Compulsory guidelines for transnational corporations must be established, guidelines such as were requested in the Declaration and the Program of Action of the Millennium Forum (United Nations, New York, 26 May 2000, Point 2 of Section A) by more than 1000 non-governmental organisations from 100 countries. These guidelines should also address the question of technology transfers.

d) Governments that have not yet done so should incorporate into legislation the criminal liability of legal entities.

e) There is no competent international criminal jurisdiction for judging private legal entities. The statutes of the International Criminal Court adopted in Rome and in force since 1 July 2002, do not provide for judging legal entities or infractions against social, economic and cultural rights. For the time being, the possibility of using this court to inform the prosecutor (individuals may not denounce much less file a complaint in this court) of violations of human rights committed by transnational corporations so that the prosecutor may decide to indict those responsible is, all the same, not to be ruled out. It would be advisable however to promote the reform of the statues of the International Criminal Court to include under its jurisdiction infractions against economic, social and cultural rights and the criminal liability of private individual persons.

f) For the time being, national courts are the only ones that may receive complaints and requests against transnational corporations and their managers and directors, to the extent allowed by an ever-growing application of the principle of universal jurisdiction.

g) At present, there is a number of trials under way against transnational corporations and their directors and managers in various national jurisdictions for violations of several categories of human rights : environment degradation, violation of labor rights, complicity in harassment and murder of unionists, crimes against humanity, etc. Among the accused corporations, there are several « Global Contact » partners.

h) Finally, the possibility of creating an international tribunal for transnational corporations

should be studied, based on the model of the International Court of the Law of the Sea, established by the Convention on the Law of the Sea (Montego Bay, December 1982).

III. Government responsibility

19. The right to development and the progressive enjoyment of economic, social and cultural rights comports the obligation, for governments, to do their utmost to promote the economic, social and cultural progress of their peoples.

20. Governments have, in the area of economic, social and cultural rights as well as in the area of the right to development, not only obligations towards their own peoples but also, as members of the international community, towards other countries and towards humanity in general. It is a question of rights called « rights of solidarity » (Art. 1, par. 1, of the United Nations Charter; Art. 22 of the Universal Declaration of Human Rights; Art. 2 of the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Right to Development - especially Art. 2 and Art. 6 -, etc.).

21. Governments are also responsible, when they have failed in their oversight duty, for violations (on their own territory or across-borders) committed by individuals (including transnational corporations) which come under their jurisdiction, as has been established by arbitration decisions and by numerous international conventions, in particular those relative to the preservation of the environment.

22. Governments are internationally responsible for the incorporation of basic international standards into their domestic law.

23. To fulfill their obligations, governments have the right and the duty to protect and to guarantee the right of their peoples to freely dispose of their wealth and natural resources, and they must act in such as way that those peoples are not deprived of their means of subsistence (Art. 1, par. 2 of the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Right to Development).